IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS SOBIECH, on behalf of himself and all others similarly situated, Plaintiff, vs. U.S. GAS & ELECTRIC, INC., i/t/d/b/a PENNSYLVANIA GAS & ELECTRIC; ENERGY SERVICES PROVIDERS, INC., i/t/d/b/a PENNSYLVANIA GAS & ELECTRIC; and PENNSYLVANIA GAS & ELECTRIC, Defendants.	No: **CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

AND NOW, Plaintiff Thomas Sobiech brings this action individually and on behalf of all others similarly situated (the Class), and alleges as and for their Class Action Complaint against Defendants U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric; Energy Services Providers, Inc., i/t/d/b/a Pennsylvania Gas & Electric; and Pennsylvania Gas & Electric, (hereafter "Defendants"), upon personal knowledge as to himself and his own acts, and as to all other matters upon information and belief, based upon, *inter alia*, the investigation made by his attorneys, as follows:

INTRODUCTION

1. This is a proposed class action brought by Plaintiff on behalf of himself and other like customers of Defendants. Defendants have and continue to promise customers competitive market-based rates and savings on their electric energy bills if they switch from their local utilities or other energy suppliers to Defendant Pennsylvania Gas & Electric (hereafter "PAG&E").

However, these representations are a bait-and-switch trap. Within a few billing cycles, Defendants routinely increase their customers' rates well above the market. A customer may end up paying two to three times more for electricity than what he or she paid before converting to PAG&E. Instead of benefitting from switching to PAG&E, a typical customer loses hundreds or even thousands of dollars per year. Thus, Defendants deceptively cause their customers to pay considerably more for energy than they should have, and otherwise would have, paid. Defendants' acts and omissions in connection with its energy supply activities constitute breach of contract and unjust enrichment and warrants declaratory relief.

PARTIES

1. Plaintiff Thomas Sobiech is a resident of Jersey Shore, Lycoming County, Pennsylvania.

2. Defendant U.S. Gas & Electric, Inc. is a Delaware Corporation with its principle place of business in Miramar, Florida.

3. Defendant Energy Services Providers, Inc. is a New York Corporation with its principle place of business in Miramar, Florida.

4. Defendant PAG&E, is a fictitious name with an office address of 4075 Linglestown Road #113, Harrisburg, PA 17112. It is believed that Defendant PAG&E is the fictitious name under which Defendants U.S. Gas & Electric, Inc., and Energy Services Providers, Inc. operate as electric suppliers in Pennsylvania. PAG&E is licensed as an electricity supplier in Pennsylvania with a license number of A-2009-2121686. Upon information and belief, Defendants created PAG&E in 2009 and have regularly and systematically conducted business throughout this district.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction of the claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1332(d)(2)(A) in that the amount in controversy exceeds the sum or value of $5,000,000.00 exclusive of interest and costs, and is a class action in which members of the putative Class are citizens of States different from Defendants.

6. Venue is proper pursuant to 15 U.S.C. § 80b-14 and 28 U.S.C. § 1391. Defendants regularly transact and solicit business in this District.

OVERVIEW

7. This lawsuit arises from a fraudulent and deceptive scheme perpetrated by Defendants.

8. Plaintiff Thomas Sobiech on behalf of the class he seeks to represent brings this lawsuit to redress Defendants' unlawful and unconscionable consumer practices in Pennsylvania.

9. In 1996, Pennsylvania deregulated energy supply in the Commonwealth. Energy deregulation has enabled consumers to purchase their energy supply from an Energy Services Company (ESCO) of their choice. The intent of the deregulation law was to provide consumer choice and allow competition to drive down customer rates. Since deregulation, the utility company is no longer the only option for energy supply. Customers may now purchase electricity through ESCOs while continuing to obtain delivery from their local public utilities.

10. Defendants take advantage of the regime in deregulated states such as Pennsylvania by adopting deceptive and unconscionable business tactics. Defendants mislead consumers to believe that by switching to PAG&E they will save money. Defendants stated in their welcome letter (Attached hereto as Exhibit "A") to Plaintiff that "On behalf of everyone at PAG&E, we would like to thank you for enrolling in our competitive electricity supply program. We are

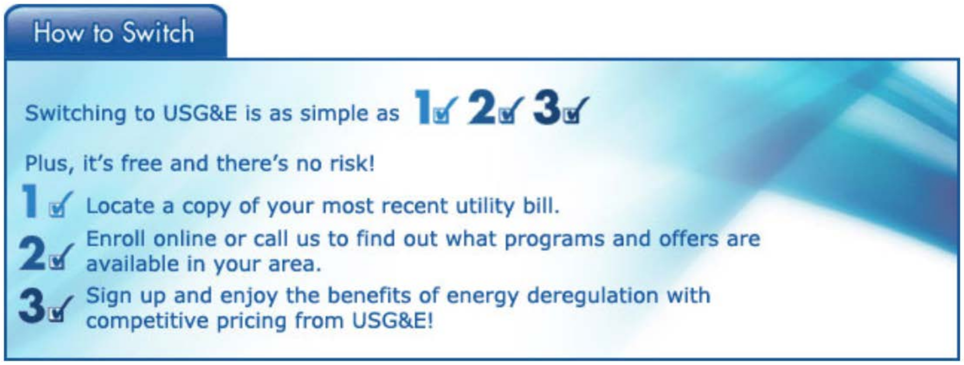
committed to helping you lower your total energy costs." Further Defendants represent that their rates will be tied to market factors and their rates will be competitive with the market. In fact, as many customers soon discover, Defendants' representations only hold for the first few months of service; after that, their rates skyrocket, completely divorced from prevailing market conditions. At a minimum, Defendants exploit ambiguities in their representations and customer agreements to draw consumers in by creating the expectation of competitive prices they will never realize. Defendants fail to disclose that, on a consistent basis, their regular rates are substantially higher than their competitors and are exorbitant when compared to the market.

11. Defendants' practices emerge from, and take advantage of, the deregulation of the energy supply markets in Pennsylvania and other states where Defendants do business - including New York, New Jersey, Maryland, Connecticut, Massachusetts, Ohio, Kentucky, Indiana, Michigan, Illinois and Washington D.C. Under these states' deregulation laws, the supply portion of a consumer's electric bill is separated from the delivery portion. In theory, with the supply portion open to competition, customers can freely shop around for the best price for their energy. By engaging in its bait-and-switch scheme, Defendants subvert the consumer-friendly purpose of the Pennsylvania law and prevent their customers from making a free, informed choice. In reality, most customers would be far better off staying with their local utilities or another supplier than switching to PAG&E.

12. As part of their business plan, Defendants regularly entice customers into their bait-and-switch scheme using cash back offers or 12% off their highest month's bill after 12 months. Exhibit A. Defendants tell their customers that: "When customers participate in energy deregulation, they benefit from competitive pricing for energy related products and services;"[1] "Unlike your utility, energy suppliers have the ability to offer structured pricing plans ***that are***

[1] http://www.usgande.com/markets/pennsylvania/EnergyChoice/Deregulation.aspx

tailored to meet the expectations of your budget. Value-added offers, programs and incentives are also additional benefits of deregulation."[2] (Emphasis added); and "When you are ready to gain control of your energy costs, we will work with your current provider to finalize the details of your enrollment with us to ensure a smooth and seamless transition."[3] As can be seen in item number "3" in the image below, taken from Defendants' webpage, the clear implication is that Defendants are purchasing energy at market rates, where vigorous competition ensures the lowest possible prices for their customers.[4] Aside from these statements being completely false and purposefully misleading, the alleged value of these inducements is negligible, if nonexistent, when compared to the amounts by which Defendants overcharge their customers through their deceptive conduct and practices.


How to Switch
Switching to USG&E is as simple as 1 2 3
Plus, it's free and there's no risk!
1 Locate a copy of your most recent utility bill.
2 Enroll online or call us to find out what programs and offers are available in your area.
3 Sign up and enjoy the benefits of energy deregulation with competitive pricing from USG&E!

12. Plaintiff Thomas Sobiech brings this action on behalf of a class of Pennsylvania consumers by alleging breach of contract and, under Pennsylvania common law, breach of the covenant of good faith and fair dealing. Plaintiff also brings a claim in the alternative for unjust enrichment. Through its deceptive and unconscionable practices, Defendants likely over-charged the Class millions of dollars per year. Defendants currently have approximately 240,000 customers

[2] http://www.usgande.com/markets/pennsylvania/EnergyChoice/WhySwitch.aspx
[3] http://www.usgande.com/markets/pennsylvania/EnergyChoice/WhySwitch.aspx
[4] http://www.usgande.com/markets/pennsylvania/EnergyChoice/WhySwitch.aspx

in 11 states and Washington D.C. Upon information and belief, the class consists of thousands to tens of thousands of current and former customers with variable rate plans in Pennsylvania, each of whom has sustained damages of as much as hundreds or even thousands of dollars annually.

13. Plaintiff brings this class action to recover damages, penalties and other relief for himself and the Class of PAG&E customers who have suffered damages from Defendants' imposition of unreasonable and exorbitant energy prices in violation of the Defendants' Terms and Conditions and representations. Only a class action will provide Plaintiff and the Class with any possibility of relief. Plaintiff and the Class are therefore entitled to a class-wide remedy.

DEFENDANTS' CONDUCT WITH RESPECT TO THEIR EXCESSIVE WIDESPREAD OVERCHARGING OF ELECTRICITY TO THE PLAINTIFF AND THE CLASS AT ISSUE IN THIS ACTION

14. Prior to Defendants soliciting for and switching Plaintiff's and the Class' electrical supply service to their company, PAG&E, Defendants were aware that they would be unable or unwilling to provide Plaintiff and the Class with the savings on their electric service that they promised/contracted to deliver.

15. Defendants knew (or but for their reckless indifference would have known) that they were receiving, and were going to continue to receive, reports or complaints relating to their inability or unwillingness to deliver the savings on electric supply they had promised/contracted to provide.

16. Defendants also knew that if they properly disclosed their inability or unwillingness to provide the savings on electric supply they had promised/contracted to provide then the number of customers who utilized their services would drop significantly.

17. Thus, Defendants knew (or but for their reckless indifference would have known)

that: (a) their inability or unwillingness to provide the savings on electric supply they had promised/contracted to provide to Plaintiff and the Class was substantial and that disclosing information regarding said inability or unwillingness would cause Defendants to lose customers and market share; (b) Defendants' customers were unaware of their inability or unwillingness to provide the savings on electric supply they had promised/contracted to provide; and (c) those customers had a reasonable expectation that Defendants would disclose the fact that they were unable or unwilling to provide the savings on electric supply they had promised/contracted to provide and take steps to cure the deficiency, even if Defendants' inability or unwillingness to provide the savings on electric supply they had promised/contracted to provide did not exhibit itself until after its customers had begun receiving services from Defendants.

18. Despite such knowledge, Defendants did not disclose to prospective customers that: (a) Defendants were unable or unwilling to provide the savings on electric supply they had promised/contracted to provide and as such consumers would likely end up paying hundreds or even thousands of dollars extra per year above what they would have paid had they stayed with their prior electric utility/supplier; (b) Defendants' inability or unwillingness to provide the savings on electric supply they had promised/contracted to provide may not become apparent until months after their customers had been receiving services from Defendants; and (C) once Defendants' inability or unwillingness to provide the savings on electric supply they had promised/contracted to provide manifested itself, Defendants were not committing to remedy the situation or be held responsible for any excessive overcharges their customers would incur.

19. Furthermore, Defendants knew the only way to avoid the harm or potential harm was to provide notice to Plaintiff and those similarly situated, prior to providing services to them, that, in fact, Defendants would not be able to provide, or would be unwilling to provide, the savings on

electric supply they had promised/contracted to provide which would in turn obliterate any viable reason for any customer to receive services from Defendants.

PLAINTIFF'S ALLEGATIONS

20. Plaintiff’s wife, Tina Sobiech, enrolled Plaintiff as a PAG&E customer as a result of Defendants’ deceptive representations. As such, PAG&E began to supply Plaintiff’s residential electricity on October 31, 2013.

21. Because of Defendants' conduct, Mr. Sobiech has incurred hundreds of dollars in overcharges. Plaintiff’s February 25, 2014, bill shows that Defendants charged him $0.2729 per kilowatt hour (Kwh) which was more than three times the rate that Plaintiff’s local energy provider, PPL Electric Utilities (Hereafter PPL), would have charged him during the same time period at $0.0875 per kwh.

22. Plaintiff was unable to cancel his service without penalty as he was still responsible for the outrageous bill he incurred as a result of Defendants’ deceptive and misleading statements which induced his wife to sign up with Defendants in the first place.

23. Plaintiff made several attempts to cancel his service by contacting PAG&E. Plaintiff called numerous times and left at least one message that was never returned. PAG&E received notice from Plaintiff’s utility (PPL) on February 11, 2014, that Plaintiff wished to terminate service with PAG&E. Plaintiff’s service with PAG&E was not terminated until March 30, 2014.

24. In March 2014, Defendants issued Plaintiff a rebate that amounted to a portion of the difference in electric supply charges between what was charged by Defendant PAG&E and what he would have been charged by his utility.

25. Defendants have also failed to meaningfully disclose how their rates are determined.

Upon information and belief, Defendants' customers are not told the actual rates that they have been charged until they receive their bill and have utilized the energy for which they are being charged.

26. Defendants' rates are not competitive with other suppliers or in line with market factors. Customers who switch to PAG&E can pay as much as up to almost four times the going rate in their area. Defendants' customers regularly complain that their rates far exceed that of any other supplier, that their rates have more than doubled after the first few months, and that they are often being overcharged by up to 300% as compared to remaining with their local utilities.

27. Defendants do not disclose these material facts to their customers but actively encourage the false perception that switching to and remaining with Defendants will mean savings to the cost-conscious consumer.

28. Defendants' various representations regarding price are materially misleading to consumers and have the capacity to mislead. Given knowledge of the relevant facts regarding Defendants' exorbitant rates after the first few months and when compared to their local energy supplier, no reasonable consumer would choose Defendants as an energy supplier.

29. Defendants knew (or but for their reckless indifference would have known) prior to agreeing to supply electricity to Plaintiff that they would be unable or unwilling to provide the savings and/or competitive rate that they agreed/promised to provide.

30. Defendants knew (or but for their reckless indifference would have known) prior to agreeing to act as Plaintiff's agent/power of attorney in acquiring sufficient energy supplies to meet Plaintiff's needs in the energy supply market that Defendants would be incapable, unable or unwilling to timely, skillfully, knowledgeably, reliably and/or honestly make the necessary and/or

appropriate energy purchases to provide the savings and/or competitive price that they contracted/promised to provide.

31. It is clear that Plaintiff and Defendants did not deal with each other on equal terms due to Defendants' perceived overmastering dominance related to Defendants' purported skill and experience in purchasing electric energy supplies timely, skillfully, knowledgably, reliably, honestly and efficiently in the open market and Plaintiff depended on and trusted Defendants to do so. Defendants betrayed Plaintiff's trust.

32. As a result of Defendants' inability or unwillingness to provide Plaintiff with the competitive rates and/or savings they contracted/promised to provide, Plaintiff incurred significant overcharges for his electricity.

33. As a result of Defendants' inability or unwillingness to purchase electric energy supplies timely, skillfully, knowledgably, reliably, honestly and efficiently in the open market, as they contracted/promised to, Plaintiff incurred significant overcharges for his electricity.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings all claims herein as class claims pursuant to Fed. R. Civ. P. 23. The requirements of Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) are met with respect to the class defined below.

A. Class Definition(s)

35. The (b)(2) Injunctive Relief Class consists of: All persons who contracted with Defendants to act as their electric supplier.

36. Excluded from the Class(es) are: Defendants, any entities in which they have a

controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such person's immediate families and the presiding judge(s) in this case and his, her or their immediate family.

B. Numerosity

37. At this time, Plaintiff does not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiff believes that the Class members are so numerous that joinder of all members is impracticable. The number and identities of Class members is administratively feasible and can be determined through appropriate discovery.

C. Commonality

38. There are questions of law or fact common to the class, including at least the following:

a. Whether Defendants contracted to provide savings and/or a competitive rate on their electric services;

b. Whether Defendants made representations that they would provide savings and/or competitive electric rates to induce potential customers into securing their services;

c. Whether Defendants' inability or unwillingness to provide savings or competitive electric rates as complained of herein caused the damages of Plaintiff and other members of the Class;

d. Whether Defendants had actual or imputed knowledge of their inability or unwillingness to provide savings or competitive electric rates as complained of herein and failed to disclose it to Plaintiff and the Class;

e. Whether Defendants have a pattern and practice of attributing damages claimed by Plaintiff and the Class to rising electric energy prices in the open market or other causes not in their control, and not due to its inability or unwillingness to provide savings or competitive electric rates as complained of herein;

f. Whether Defendants acted or refused to act on grounds generally applicable to the Class;

g. Whether Defendants' conduct constitutes consumer fraud and/or common law fraud;

h. Whether Defendants were unjustly enriched by their conduct; and

i. Whether Plaintiff and other members of the Class have been damaged, and if so, what is the proper measure of such damages?

D. Typicality

33. Plaintiff has the same interests in this matter as all other members of the Class, and his claims are typical of all members of the class.

E. Adequacy

34. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in the prosecution and successful resolution of consumer class actions. Plaintiff will fairly and adequately represent the interests of the Class members and does not have interests adverse to the Class.

F. The Prerequisites of Rule 23(b)(2) are Satisfied

35. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed. R. Civ. P. 23(b)(2) exist as Defendants have acted or refused to act on grounds generally applicable to the Class thereby making final injunctive and equitable relief appropriate with respect to the Class as a whole.

36. The prosecution of separate actions by members of the Class would create a risk of

establishing incompatible standards of conduct for Defendants. For example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interest of Class members, who would not be parties to those actions.

37. Defendants' actions are generally applicable to the Class as a whole, and Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole.

38. Defendants' systemic policies and practices make declaratory relief with respect to the class as a whole appropriate.

G. The Prerequisites of Rule 23(b)(3) are Satisfied

40. This case satisfies the prerequisites of Fed.R.Civ.P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

CAUSES OF ACTION

COUNT I

(BREACH OF CONTRACT)

41. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraphs as though fully set forth herein.

42. Defendants had valid contracts with Plaintiff and the Class Members.

43. Plaintiff and the Class substantially performed their obligations under the contracts.

44. As discussed herein, Defendants breached the contracts.

45. Where the relevant agreements between Defendants and the Class do not specify the applicable price, to prevent the contract from being too indefinite or from placing Plaintiffs and the Class at Defendants' mercy, the agreements should be deemed to contain an implied contractual term mandating a reasonable price. In this case, a reasonable price would be the rate being charged by the Plaintiff’s and the Class’ local electric utilities during the applicable class period.

46. Defendants breached this implied contractual term by charging Plaintiff and the Class members unreasonable and exorbitant prices.

COUNT II

(UNJUST ENRICHMENT- IN THE ALTERNATIVE)

47. Plaintiff and the Class incorporate by reference each preceding and succeeding paragraphs as though fully set forth herein.

48. Should the Court determine that a valid, enforceable and binding contractual relationship did not exist between the parties at any time or covering any aspect of their relationship, Plaintiff brings this claim in the alternative for unjust enrichment.

49. Because of Defendants’ wrongful activities described above, including charging

Plaintiff and the Class exorbitant rates grossly out of line with market conditions; Defendants have received money belonging to the Plaintiff and the Class.

50. By collecting exorbitant and unreasonable rates from Plaintiff and the Class, Defendants have benefited from receipt of the excessive rates, and under principles of equity and good conscience, Defendants should not be permitted to keep this money.

51. Defendants have reaped improperly obtained profits and unjustly enriched themselves at the expense of Plaintiff and the Class.

52. As a result of Defendants' imposition of these excessive and unreasonable energy rates, Defendants must account to Plaintiff and the Class for such unjust enrichment and disgorge their improperly obtained profits as restitution to Plaintiff and the Class.

60. Plaintiff seeks to obtain a pecuniary benefit for the Class in the form of all reimbursement, restitution and disgorgement from Defendants. Plaintiff's counsel are entitled to recover their reasonable attorneys' fees and expenses as a result of the conference of a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.

61. By reason of the foregoing, Plaintiff and the Class have suffered money damages in an amount to be determined during the trial of this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class of persons described herein, pray for an Order as follows:

a) Finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3), and certifying the Class defined herein;

b) Designating Plaintiff as representative of the Class and his counsel as Class counsel;

c) Entering judgment In favor of Plaintiff and the Class and against Defendants;

d) Awarding Plaintiff and Class members their individual damages and attorneys' fees and allowing costs, including interest thereon;

e) Imposing a constructive trust on amounts wrongfully collected from Plaintiff and the Class members pending resolution of their claims herein;

f) Award injunctive relief as appropriate and necessary to remedy Defendants' wrongful conduct and to prevent the wrongful conduct from continuing; and

g) Granting such further relief as the Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims and issues.

Dated: July 25, 2014

Respectfully Submitted,

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